IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (LOD) NO.342 OF 2003

The Commissioner of Income Tax ..Appellant.

V/s.

M/s.Khatau Industries Ltd. ..Respondent.

Mr.Ashok Kotangale i/b. L.S. Shetty for appellant.

Ms.Beena Pilla i/b. D.M.Harish & Co. for respondent.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 20TH DECEMBER, 2006.

P.C. :-

Heard Mr.Kotangale in support of the motion. Ms.Pillai appears for respondent. Appeal seeks to raise four questions of law which are as follows:-

1) Whether the notional interest on account of interest free loans given by the assessee to their sister concerns out of interest borrowing loan taken by the assessee and the interest is debited as expenses is to be treated as income of the assessee ?

2) Whether the capital gain on transfer of goodwill on sale of printing business is to be treated as an income chargeable to tax ?

3) Whether the amount received on surrender of tenancy right is an income chargeable to tax. If the above question is in affirmative then Whether the above income is to be treated as capital gain or income from sources ?

4) Whether the surplus received by the assessee

under an agreement between the assessee and the Cable Corporation of India is an income chargeable to tax ?

2. As far as the first question of law is concerned, it is with respect to the notional interest on account of interest free loans given by the assessee to their sister concern. Ms.Pillai has pointed out that in earlier assessment year i.e. 1985-86 the Tribunal has accepted the submissions of the petitioner that the Company has received an amount of Rs.60,00,000/- on account of sale of one of its division and it is this amount which was given to the sister concern. She has also drawn our attention to the Profit and Loss Account for the assessment year 1987-88 to point out that it is this amount which has been given as loan to the sister concern and not any loan obtained from a Bank. Inasmuch as, proper explanation has been given. We do not find any merit as far as the first question is concerned.

3. As far as the alleged capital gain on transfer of goodwill on sale of printing business is concerned, the findings which is sought to be challenged is a finding of fact and, therefore, we do not think there is any occasion to go into this aspect by classifying it as the question of law. This aspect is seen in para No.15 of the order passed by the Tribunal.

4. As far as the amount which is received on account of surrender of tenancy is concerned, there is a finding given by the Tribunal in paragraph 22 that the assessee held the rights as a lesser without payment of any premium. That being the position, the Tribunal was right in not including the amount received on account of transfer of tenancy right in the assessable income of the respondents.

5. The last question is the surplus received by the assessee under an agreement between the assessee and the Cable Corporation of India. So far as this aspect is concerned, the Tribunal, has followed the Judgment of this Court in **Commissioner of Income-tax V/s. Radhesham R. Morarka Pvt. Ltd.** reported in **127 I.T.R. 111**.

6. This being the position, there is no reason to entertain this appeal on any of these four questions of law. Appeal is dismissed.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)